

Eye on elder issues

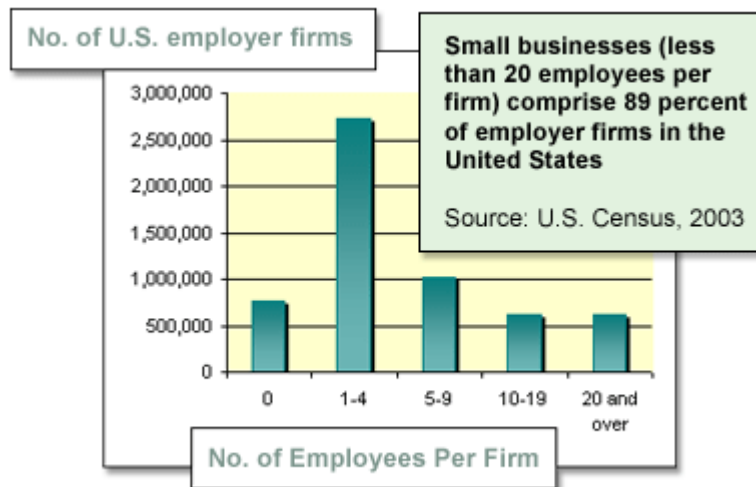
EYE on ELDER ISSUES
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Small Businesses Threatened by Medicaid Reforms

This is the third of a series of articles that will analyze the impact of the recent Medicaid reforms as set forth in the Deficit Reduction Act of 2005 (DRA) signed by President Bush on February 8, 2006.

Small family-run businesses -- often passed from one generation to the next -- maintain employment for not only the younger generation, but also those in the community who work in small businesses. **Small businesses are responsible for much innovation in our country, as well as much of the growth in our economy.** In 2005, David A. Sampson, the U.S. Department of Commerce's Economic Development Administration Assistant Secretary, said "Entrepreneurs are the engines of economic vitality and job creation because they are committed to tapping in and leveraging the power and the opportunities that private markets provide. "Many of these small businesses have values of less than \$500,000 and are subject to many market and governmental threats to their very existence. While the nation's leaders depend on small business as a driving force, **changes in Medicaid law – from legislation passed by Congress and signed earlier this year by President Bush – present a threat to the livelihood of family businesses** and reduce the likelihood that their children or grandchildren will own or maintain the family business.

The new Medicaid reform legislation increases the look-back period from three years to five years for those who transfer assets and no longer begins the disqualification penalty period on the date of the transfer. Instead, it now begins after the person would be otherwise eligible for Medicaid assistance. This will have a significant impact upon small businesses.



For example

Consider a family that owns a small lumber and hardware operation. We'll call them the Jackson family. The father started the business and employs all four of his children and several of his grandchildren. The children, three of whom are college educated, are underpaid but willing to continue working in order to build the family business for their future. The father, as an incentive to carry on the family business, gifts 50 percent of the ownership to his children in August of 2006. The business is worth approximately \$350,000, and the family has little by way of assets, besides the business and their residence.

Three years later, Mrs. Jackson (who is not involved in the family business) has a stroke on Thanksgiving Day and requires nursing home care. Under the new federal law the gift of the business now disqualifies her from Medicaid assistance. Before the new law, a gift more than three years ago would not have caused a problem. Now, because of the five year look-back period, this gift will be penalized. More importantly, before the new restrictions the penalty start date would have been the date Mr. Jackson gifted the family business to his children, and in most states the penalty period would have already passed. Now, **the waiting has just begun since the penalty period will not start until most of their assets are gone and she would otherwise be eligible for Medicaid.** This will take a major toll on the family business.



Mrs. Jackson is 66 years of age, while Mr. Jackson is 67 years of age. Even if she qualifies **neither Medicare nor her healthcare insurance will pay for the nursing home care beyond the first 100 days**, and as such, Mr. Jackson will be faced with the reality that the family business does not generate sufficient income for him to continue paying salaries to all four of his children, continue to employ other members of the community for ordinary labor, and still pay himself sufficient amounts to pay for his wife's care. Further, as he has not set aside additional sums for retirement, he will have to sell the business. Based upon the practice in most states, the state will likely require that the business be sold to the highest bidder.

According to the Federal Reserve 2004 Survey of Consumer Finances, **43.9 percent of Americans aren't saving at all. Only one third** of Americans are saving enough to maintain their standard of living when they retire



Congress has taken great pains to relieve small business owners of the federal estate tax, and in truth, most small business owners do not have sufficient assets to worry about the "death tax".

However, most small business owners, like Mr. Jackson, are faced with a 100% healthcare tax that has been thrust upon them with these recent Medicaid reforms.

The National Academy of Elder Law Attorneys (NAELA) believes that this new legislation will be **harmful to the economy, harmful to the culture, and highlight the fallacies of our current patchwork healthcare system.**



For more information about elder law attorneys and the National Academy of Elder Law Attorneys, visit www.naela.org. Established in 1987, NAELA provides a resource of information, education, networking and assistance to those who deal with the many specialized issues involved with legal services to the elderly and people with special needs.

Note to Our Readers: This e-newsletter, **Eye on Elder Issues**, is presented as a public service by the National Academy of Elder Law Attorneys (NAELA). We are pleased to send you this issue and welcome your comments. You can expect to receive this newsletter monthly as NAELA explores, reports and provides insight on timely topics affecting our nation's seniors and their families. In addition, the growing population of Baby Boomers is addressing issues for themselves and their families that are new and unique. This publication is intended to explore those issues from all sides and to educate consumers, aging network professionals, law makers, and members of the media.

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